IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5139 OF 2007

Shri Sant Damaji Juni Samathi Jirnodhar
Charity Trust & Ors... ....Petitioners.
V/s
State of Maharashtra & Ors... ....Respondents.

Mr.A.V.Anturkar with Mr.S.B.Deshmukh, Adv. For the petitioners.

Mr.S.M.Oak, Adv. For the respondents.

CORAM: A.P.DESHPANDE, J.
25/7/07

PC:

The present petitioners are challenging an order passed by the Additional District Judge, Pandharpur in Civil Miscellaneous Appeal No.61/07 confirming the order passed by Civil Judge, Senior Division, Pandharpur dated 6.6.07 below Exh.80 in Regular Civil Suit instituted by the present petitioners bearing No.61/05.

2. The respondent is Municipal Council by name Mangalwedha Nagar Parishad. Apprehending demolition of the structure and interference with the possession of the suit properties the present petitioners instituted a civil suit for declaration of ownership and perpetual injunction. In the said suit an application for temporary injunction was filed seeking to restrain the respondent-Municipal Council from disturbing the possession of the petitioners. The trial Court granted

temporary injunction allowing the application at Exh.5. Aggrieved thereby miscellaneous civil appeal was carried by the Municipal Council before the District court and the Miscellaneous Civil Appeal came to be dismissed by the Additional District Judge, Pandharpur. The respondent-Municipal Council thus filed a writ petition in this Court calling in question the legality and validity of the orders passed by the Courts below. It was the case of the respondent-Municipal Council that the present petitioners have encroached upon a public road and the structures standing thereon are illegal and unauthorised. The structures are said to have been raised without obtaining prior permission and sanction from the Municipal Council. By an order dated 20.11.2006 this Court clarified that the orders under challenge do not come in way of the Municipal Council for removal of unauthorised structures by resorting to the procedure established by law.

A public interest litigation bearing No.95/04 was filed in the High Court wherein grievance was made against the encroachments made on public property and adjoining roads in Solapur district. A division bench of this Court had passed an order on 20.3.07 directing the Collector to take steps for removal of encroachments. Taking support from the judgment rendered in Public Interest Litigation and the clarification granted by this Court in order dated 20.11.06 in Writ Petition No.5042 of 2006 with Writ Petition No.5043 of 2006, the Municipal Council issued

notices to the present petitioners under section 179(3) of Maharashtra Municipal Council Act contending that the petitioners' structure is encroachment on the road of the Municipal Council. In the said notice a reference of the order passed in public interest litigation is also made. Apprehending demolition of the structures the present petitioners moved an application at Exh.80 before the trial Court in the pending suit and sought injunction against the Municipal Council. The petitioners have tried to establish with the support of documents in their possession that the structures in question are legally built up and are not encroachment on the road of the Municipal Council. The Municipal Council as well placed on record various documents with a view to establish that the petitioners are encroacher on the road and the structures erected by them are illegal and without any authority. The said structures are claimed to have been raised without sanction of the map or permission of the Municipal Council. The trial Court after elaborately discussing the evidence and material on record reached the following conclusion:

> "Defendant Municipal Council has filed the copy of measurement map dated 16th and 17th April 2003 demarketing the municipal road area. All the plaintiffs were present at the time of said measurement. The statements of plaintiffs were also recorded by the measurer on 17.4.2003, as per document Exh.60. This measurement map also reveal that construction on plaintiffs

premises is a encroachment on municipal road."

Having factually found that the petitioners' structures are encroachments on municipal road the trial Court refused to grant injunction as prayed for. Aggrieved by the order passed by the trial Court the petitioners filed appeal before the District Judge, Pandharpur. The District Judge, Pandharpur considering the evidence and material on record and after perusing the order passed by the trial Court has concurred with the view taken by the trial Court that the construction of the present petitioners is an encroachment and an illegal structure. It further recorded a finding that the petitioners have failed to establish prima facie their ownership over the disputed property. The First Appellate Court has then proceeded to consider the dispute bearing in mind the conflict between public interest and private interest. Taking a very possible view of the matter the First Appellate Court has rejected the Miscellaneous Civil Appeal and aggrieved thereby the present writ petition has been filed. The learned counsel for the petitioners has submitted that there are various documents from which it can be demonstrated that the petitioners' structures are legal. He has taken me through some of the documents on record. It is submitted that both the Courts below have committed patent illegality requiring interference with the impugned order as otherwise the petitioners would suffer irreparable loss, undue hardship and inconvenience. After perusal of the impugned orders I am

satisfied that the entire evidence and material on record has been thoroughly scanned by the trial Court while reaching conclusion that the petitioners have failed to establish a prima facie case in their favour. The finding of the fact as recorded by the trial Court is concurred in appeal by the First Apellate Court that the construction of the petitioners is on the area covered by municipal road. There is no reason to interfere with the said finding of fact recorded by the Courts below. I do not see any illegality committed by the Courts below requiring an interference in exercise of writ jurisdiction. No case is made out.

Hence writ petition is summarily dismissed.

At this stage the learned counsel for the petitioner seeks continuation of status quo for a period of four weeks. Status quo to continue for four weeks.